FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY

DATE: June 21, 2006

SUBJECT: COMMENT: DRAFT AO 2006-14
National Restaurant Association, PAC

Transmitted herewith is a timely submitted comment by Mr. Donald Simon on behalf of The Campaign Legal Center and Democracy 21 regarding the above-captioned matter.

Proposed Advisory Opinion 2006-14 is on the agenda for Thursday, June 22, 2006.

Attachment

June 21, 2006

By Electronic Mail

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Comments on Advisory Opinion Request 2006-14 (NRA PAC)

Dear Mr. Norton:

These comments are filed on behalf of the Campaign Legal Center and Democracy 21 in regard to AOR 2006-14, an advisory opinion request submitted by National Restaurant Association PAC.

The general counsel's office has circulated three alternative draft opinions in response to the AOR, without endorsing any draft. For reasons set forth below, we urge the Commission to adopt the analysis and conclusions contained in Draft A.

The key question presented by the AOR is whether a "connected" SSF – a committee established by a corporation, labor union or trade association under 2 U.S.C. § 441b(b)(2)(C) – may solicit *from the general public*, collect and deliver earmarked contributions to a federal candidate; *i.e.*, act as a "bundler."[1]

As correctly pointed out in Draft A, the PAC provisions of the statute have long been based on the preservation of a "careful balance struck by Congress." Draft A at 9.

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[1] The AOR raises a separate issue, not addressed in any of the drafts, of whether the earmarked contributions are subject to the "direction and control" of NRA PAC, and thus count against the contribution limits of NRA PAC under 11 C.F.R. § 110.6(d), where donations are solicited for a specific candidate, and then collected and delivered to the candidate by the NRA PAC. *See* Ad. Op. 1986-4 (Armstrong) (finding "direction and control" in collection of earmarked contributions by a corporate SSF); *see also FEC v. National Republican Senatorial Committee*, No. 93-1612 (TFH) (D.D.C. June 24, 1994) (stipulated judgment finding earmarked contributions to candidates forwarded by a party committee count against party committee's contribution limit where the original donor designates candidate-recipient at party committee's request). Here, to the extent that NRA PAC solicits donors to make contributions to a specific candidate, and not to a broad list of possible recipients, and then collects the donations and delivers them to the candidate, it is exercising "direction and control over the choice of the recipient candidate" within the meaning of section 110.6(d).

"Connected" SSF committees have the considerable advantage that their establishment, administration and solicitation costs can be subsidized by their connected corporation, union or trade association, using treasury funds that would otherwise be prohibited in federal elections. In exchange, a connected SSF is limited to soliciting only its "restricted class" for contributions to itself, and cannot solicit the general public for such contributions. 2 U.S.C. § 441b(b)(4)(A); 11 C.F.R. § 114.5(g).

By contrast, a "non-connected" committee is free to solicit the general public. On the other hand, a non-connected committee must pay all of its administration and solicitation costs from the federally compliant funds it raises, and cannot receive or use non-federal funds to pay any of its costs.[2]

To allow a connected SSF to bundle earmarked contributions that it has solicited from the general public would be, in a material way, to disrupt this scheme. As Draft A correctly states, "[I]t would be equivalent to NRA PAC soliciting contributions from the public to NRA PAC itself." Draft A at 9.

This is so because the reliance on bundling by the SSF of the earmarked contributions of others would functionally replace the need or desire of the SSF to make contributions to a candidate from its own funds. "[T]he contributions that the SSF would collect from the general public, although earmarked to Federal candidates, would, in effect, serve as proxies for contributions to the SSF itself." Draft A at 10-11.

Yet while a contribution by the SSF from its own funds would have to be made with money solicited only from its "restricted class," the proposal made by NRA PAC would allow the bundled checks to be solicited from the general public. Although it is true that an SSF can spend its funds for a solicitation to the general public for contributions to be sent *by the contributor directly to the candidate* ("Vote for Smith; Give to Smith"), it has not been the law that an SSF could solicit the general public for candidate contributions to be sent to, and then forwarded to the candidate by, the SSF itself.

To permit this would unravel the statutory restriction on solicitations to the general public by an SSF for contributions to its account. Under the NRA proposal, it would be a simple matter for an SSF to accomplish the functional equivalent of what is prohibited by law – *i.e,* making public solicitations of contributions to itself ("Give to

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[2] The Supreme Court in *California Medical Assn v. FEC*, 453 U.S. 182, 201(1981) took note of this distinction in solicitation rights between connected and non-connected PACs: "In addition, multicandidate political committees are generally unrestricted in the manner and scope of their solicitations; the segregated funds that unions and corporations may establish pursuant to § 441b(b)(2)(C) are carefully limited in this regard. §§ 441b(b)(3), 441b(b)(4)." *See also FEC v. National Right to Work Committee,* 459 U.S. 197, 201-02 (1982) ("The Act restricts the operations of such segregated funds, however, by making it unlawful for a corporation to solicit contributions to a fund established by it from persons other than its 'stockholders and their families and its executive or administration personnel and their families.' 2 U.S.C. § 441b(b)(4)(A).").

NRA PAC") from which it makes contributions to its favored candidates – by instead making public solicitations of earmarked contributions to its favored candidates to be sent to itself and then delivered to the candidate ("Send contributions for Smith to NRA PAC").

The net effect, however, is the same: the SSF would be permitted to engage in solicitations of funds outside of its restricted class for which the SSF would receive the credit and benefit. As Draft A states, "A successful solicitation to the general public on behalf of a candidate would relieve the SSF of the need to expend its own limited funds as contributions to the candidate and would enable the SSF to redirect those funds to other purposes, such as, for instance, financing additional solicitations to the general public." Draft A at 11.

This would unravel a key element of the statutory scheme by allowing SSF's to have their cake (enjoying corporate or union subsidization of their operating costs), and eat it too (allowing unlimited solicitations of funds for the SSF to be made to the general public through the mechanism of soliciting contributions to be bundled). That would plainly "disrupt the careful balance struck by Congress in the Act" by "significantly enhancing the influence of the SSF's connected corporation in Federal elections." *Id.* at 11.

We urge the Commission to adopt Draft A.

Respectfully,

/s/ Fred Wertheimer

Fred Wertheimer
Democracy 21

/s/ J. Gerald Hebert

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